

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN  
GREEN BAY DIVISION

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UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Case No. CR 19-20
	)	Green Bay, Wisconsin
vs.	)	
	)	July 8, 2019
MICHAEL J. PROPST,	)	1:30 p.m.
	)	
Defendant.	)	

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**TRANSCRIPT OF SENTENCING HEARING**  
BEFORE THE HONORABLE WILLIAM C. GRIESBACH  
UNITED STATES CHIEF DISTRICT JUDGE

APPEARANCES:

For the Government:	United States Dept of Justice (ED-WI) By: DANIEL R. HUMBLE Office of the US Attorney - 205 Doty St - Ste 301 Green Bay, WI 54301 Ph: 920-884-1066 Fax: 920-884-2997 Daniel.Humble@usdoj.gov
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Proceedings recorded by electronic recording,  
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## TRANSCRIPT OF PROCEEDINGS

Transcribed From Audio Recording

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THE COURT: You may be seated.

THE CLERK: Court calls Case No. 19-CR-20, *United States of America vs. Michael J. Propst* for sentencing. May I have the appearances, please?

MR. HUMBLE: Dan Humble for the Government. Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. PHILLIP: Good afternoon, Your Honor. Mr. Propst is here in person, along with Tom Phillip.

PROBATION OFFICER: Good afternoon, Your Honor. Brian Koehler on behalf of Probation.

THE COURT: All right. Well, good afternoon, all.

Mr. Propst is before the Court today for a sentencing on two counts of threatening interstate communications, in violation of Title 18 U.S.C. § 875(c). That offense carries a maximum penalty of 5 years in prison and up to a \$250,000 fine.

He also has a count of obscene or harassing telephone call which carries up to 2 years in prison and a \$250,000 fine.

The presentence report is on file. I've also received sentencing memorandums from both parties.

First of all, Mr. Humble, is the government in agreement with the factual statements in the guideline

1 calculation that's recommended by probation?

2 MR. HUMBLE: Yes.

3 THE COURT: Mr. Phillip, you've gone over the  
4 presentence report with your client, I take it?

5 MR. PHILLIP: Yes. Thank you.

6 THE COURT: And I believe you state in the report you  
7 have no objections to the factual statements or the guideline  
8 calculation; is that right?

9 MR. PHILLIP: None to the guidelines. I did object to  
10 two paragraphs in the report, paragraph 62 and 63.

11 THE COURT: And your objection is that these are not  
12 related conduct or relevant?

13 MR. PHILLIP: That's one part of it, yes.

14 THE COURT: Doesn't offer sufficient evidence that can  
15 be used for character?

16 MR. PHILLIP: Yes. The objection there goes actually  
17 hand in hand with an objection about the Crime Victims' Rights  
18 Act. And so if the Court prefers, I can argue them both  
19 together or we can do that separate.

20 THE COURT: Mr. Humble, do you regard the daughter of  
21 MN as a victim who should -- who can address the Court or is  
22 this evidence you are seeking to offer as to character?

23 MR. HUMBLE: Your Honor, there's actually -- just to  
24 let the Court know, another individual showed up today, Mason  
25 Nellis. And the daughter's name is Morgan Nellis. They're here

1 today. I don't consider them victims, I consider them people  
2 who are familiar with the defendant, who I believe lived with  
3 the defendant for quite a time, and they can speak to his  
4 background and his character.

5 THE COURT: So is it your intent then to offer  
6 evidence in that form?

7 MR. HUMBLE: They would like to address the Court,  
8 yes. And if --

9 THE COURT: Well, I don't -- I think victims get to  
10 address the Court. You can present testimony --

11 MR. HUMBLE: Sure.

12 THE COURT: -- if it's relevant testimony at  
13 sentencing.

14 And then, but they have to testify under oath subject  
15 to cross-examination. And wouldn't that then take care of your  
16 complaint, Mr. Phillip, that there's no evidentiary basis? I  
17 mean, I can assess credibility like I would do in any case at  
18 the sentencing. Or --

19 MR. PHILLIP: Well, yes and no. I don't want this  
20 sentencing hearing on telephone calls to become a miniature  
21 trial on an alleged sexual assault from 2012. I don't believe  
22 that that would be relevant. I also don't think there would be  
23 any federal jurisdiction for that offense, and so this would be  
24 the wrong forum to have that testimony.

25 There isn't any limitation under Section 3661 on

1 information the Court can receive about the background,  
2 character, things like that. So if anyone wants to give  
3 information about what they think of the defendant's character,  
4 I think that they can do. But I think if we get to, again, any  
5 specifics about an alleged sexual assault from 2012, I think  
6 that that would have -- well, I think it would be the wrong  
7 forum, I think it would be irrelevant, and I think that it would  
8 be a due process problem to happen.

9 THE COURT: Mr. Humble?

10 MR. HUMBLE: Judge, I would just respond. I think  
11 there's a recognition by the parties here, certainly with the  
12 plea agreement, that this is not a guidelines case. And I'm  
13 certainly asking -- the government is -- asking the Court to  
14 kind of look at who this defendant is in a very serious way  
15 since we're asking for a sentence much above the guidelines.  
16 And I think that it's certainly acceptable for the Court to hear  
17 this kind of evidence before it makes its decision.

18 THE COURT: Yeah, I think -- I mean, I don't want to  
19 turn it into a sexual assault trial. It can't be turned in.  
20 This is a sentencing hearing on very specific counts that I  
21 mentioned earlier and that's what it will remain. But the  
22 defendant's character is an issue or a relevant concern. People  
23 that he lived with for a lengthy period of time may have  
24 evidence that bears on that. I recognize that it's dated at  
25 this point. On the other hand, the behavior that we're looking

1 on goes over a period of 20, 30 years. We're not talking about  
2 an incident that suddenly occurred and was isolated.

3 So I can't rule -- or I wouldn't rule I don't find it  
4 irrelevant in the sense of inadmissible at a sentencing hearing.  
5 Now, what weight I will give it, if any, that I will determine  
6 after listening to it, watching the witnesses, hearing whatever  
7 cross-examination there is.

8 But if the government wishes to introduce this  
9 evidence as evidence at a sentencing hearing on character of the  
10 defendant, I'll allow it. Okay. So is that where we end up?

11 First, I mean, I will recognize the objections to  
12 62-63, paragraphs 62 and 63. I'll adopt the other factual  
13 statements in the presentence report as my findings of fact.  
14 And am I correct, Mr. Phillip, the defense has no objection to  
15 the remaining --

16 MR. PHILLIP: No.

17 THE COURT: -- statements? And you're not objecting  
18 to the guideline calculation either.

19 MR. PHILLIP: No, the guidelines are correctly  
20 calculated.

21 THE COURT: Okay. Very well. Mr. Humble.

22 MR. HUMBLE: Your Honor, the government filed its  
23 sentencing memorandum. I think we very forcefully are asking  
24 this court to impose a 10-year sentence.

25 THE COURT: Do you wish to introduce the character

1 evidence you're talking about?

2 MR. HUMBLE: I will. If I could have two other  
3 individuals speak who I think Mr. Phillip recognizes are likely  
4 victims here --

5 THE COURT: Sure.

6 MR. HUMBLE: -- and address the Court first, and then  
7 I'll present the evidence.

8 THE COURT: Okay.

9 MR. HUMBLE: I would ask Loren Besson to address the  
10 Court, Your Honor. She is the mother of "Sammy" who was the  
11 individual here in Green Bay noted in paragraph 15 who kind of  
12 had the phone call that kind of kicked all this off with regard  
13 to the defendant.

14 THE COURT: Right.

15 MR. HUMBLE: And I know she'd like to address the  
16 Court.

17 THE COURT: Okay. Ms. Besson, would you please state  
18 your full name and spell your first and last name. And then go  
19 ahead and make your statement.

20 MS. BESSON: Laura Z. Besson, B-e-s-s-o-n.

21 THE COURT: How do you spell Lauren?

22 MS. BESSON: Laura, L-a-u-r-a.

23 THE COURT: L-a-u-r-a?

24 MS. BESSON: Yeah.

25 THE COURT: Thank you. Go ahead, Ms. Besson.



## 1 DIRECT TESTIMONIAL STATEMENT OF

2 LAURA BESSON

3 MS. BESSON: The day that this man called me he had me  
4 believing that he was raping and killing my daughter. It was  
5 the worst horrifying thing that you can do to a mother. It took  
6 30 minutes to realize that he didn't have my child. And he  
7 called back several times, enjoying the terror that he put me  
8 through.

9 And this has forever, ever changed my life. I fear to  
10 leave my kids alone outside. They're not allowed to play with  
11 neighbors anymore because I don't trust anybody.

12 I believe if you allow this man to get out, he is  
13 going to rape and kill a child one day. He's fantasizing about  
14 it. I mean, over and over. This is not an isolated incident.  
15 And I fear for my kids, I fear for other children, and I would  
16 lock him up and throw away the key if I could.

17 That's pretty much all I've got to say.

18 THE COURT: All right. Thank you, Ms. Besson.

19 MR. HUMBLE: Your Honor, I believe Michelle Nellis,  
20 who is referred to in the sentencing memorandum and also in the  
21 PSR, would like to address the Court. She was the longtime  
22 girlfriend of the defendant.

23 THE COURT: Okay. Now, is this the character evidence  
24 that we're talking about that is not victim/witness?

25 MR. HUMBLE: In my conversations with Mr. Phillip I

1 don't believe there's an objection to treating her as a victim.

2 MR. PHILLIP: I agree.

3 THE COURT: Okay.

4 MR. PHILLIP: It's -- Morgan Nellis is the one that I  
5 object to specifically.

6 THE COURT: Okay.

7 MR. PHILLIP: Michelle Nellis I believe would qualify.

8 THE COURT: Ms. Nellis.

9 DIRECT TESTIMONIAL STATEMENT OF

10 MICHELLE NELLIS

11 MS. NELLIS: My name is Michelle Nellis. I didn't  
12 want to be here today. But today I realized that I wouldn't  
13 want a career as a judge or even be on a jury because I wouldn't  
14 want to help in putting somebody in jail or decide their fate.

15 But as a citizen and as a mother, I know that I have  
16 to be here. I have to be here for my children, my daughter, and  
17 for the children of society. I've known Michael for 15 years.  
18 We have a 10-year-old and a six-year-old. I don't want my boys  
19 to grow up like him. I don't want them to be influenced by him.  
20 Since he's been gone my boys are happy and they're doing well.

21 And I agree with the lady behind me, I know that one  
22 day -- if it hasn't happened already -- that somebody's going to  
23 get hurt. He already hurt my daughter a couple times. And we  
24 were in a relationship. He was supposed to be a stepfather, a  
25 role model.

1           He's done this before. He's been in prison before.  
2       The judge prior said you do this again you're going away for 20  
3       years. He knew that. He was given a second chance.

4           Despite everything, he can't control himself. Really  
5       bad things are going to happen. I believe him being in prison  
6       will protect us as a society, as a family, and it will protect  
7       him. He's his own worst enemy.

8           I'm not here for revenge. I'm not being vindictive.  
9       It's nothing like that. I have to live with the guilt forever  
10      for what he did to my daughter. I didn't protect her. And  
11      she's such a good soul. And she forgave him just so that we  
12      could maybe carry on as a family.

13          I don't think he's sorry. I think he'll do it again.  
14      And I think it's going to be very bad. I really do believe  
15      that. What are we waiting for? Are we waiting for him to do  
16      something? He's not going to stop. People don't change. They  
17      don't.

18          Thank you.

19          THE COURT: Thank you, Ms. Nellis.

20          MR. HUMBLE: Your Honor, at this time I'll offer that  
21      character evidence and ask Morgan Nellis to come here and take  
22      the stand.

23          THE COURT: Ms. Nellis, please come forward and be  
24      sworn.

25          THE CLERK: Please raise your right hand.

1 Do you solemnly swear the testimony you are about to  
2 give will be the truth, the whole truth and nothing but the  
3 truth so help you God?

4 THE WITNESS: I do.

5 THE COURT: Please state your full name for the  
6 record. Please spell both your first and last names.

7 THE WITNESS: My name is Morgan Nellis, M-o-r-g-a-n,  
8 N-e-l-l-i-s.

9 THE COURT: Thank you, Ms. Nellis.

10 Go ahead, Mr. Humble.

11 MR. HUMBLE: Thank you, Your Honor.

12 MORGAN NELLIS, GOVERNMENT WITNESS, DULY SWORN

13 DIRECT EXAMINATION

14 BY MR. HUMBLE:

15 Q. And how old are you, Ms. Nellis?

16 A. I am 28 years old.

17 Q. And are you familiar with Michael Propst?

18 A. Yes, I am.

19 Q. And how are you familiar with him?

20 A. He started dating my mother when I was 14. And they were  
21 together till about five years ago.

22 Q. So you lived with him for approximately 10 years, sounds  
23 like, maybe a little longer?

24 A. Yes. On and off.

25 Q. Do you feel that you lived with Mr. Propst long enough to

1 kind of develop an idea about his character and his behavior?

2 A. Yes, I do.

3 Q. And how would you classify for the Court Mr. Propst's  
4 character?

5 A. I think he is a very sick and evil individual.

6 Q. And what brought you to that conclusion? Why do you say  
7 that here today?

8 A. This is a man who has outright said that he thinks that it's  
9 human nature to want to engage in sexual acts with children, and  
10 that that's just how it is, and that women of society have made  
11 that a vile act.

12 Q. Just to provide some context for the Court, you've overheard  
13 the defendant say that once, twice, how many times?

14 A. Only once that I have overheard it.

15 Q. What was the situation or the context that that occurred?

16 A. He was having a conversation with my mother when, after she  
17 had found some inappropriate photos of children on his phone in  
18 underwear and a state of undress, that -- and when confronted  
19 with it he said that that was natural and that that's what all  
20 men wanted and that women have made it wrong to want that, but  
21 that it's natural.

22 Q. Is there anything else during the time that you've known  
23 Mr. Propst or lived with Mr. Propst that helped you develop an  
24 idea about his character?

25 A. He -- sorry. After my son was born I was sleeping when I

1 was living with my mom and him with my son in our room, and when  
2 I woke up he had his hands on me, on my genitals. And that's  
3 what I woke up to and it was terrifying for me.

4 And I didn't know how to react. And I was just  
5 worried about my son at the time because he was in the room with  
6 me. And I was afraid that he would hurt me if I tried to fight  
7 him. And I just kind of talked him out of trying to do more  
8 than that at the time.

9 Q. How old were you at this time? Do you recall?

10 A. 19, I believe, or 20.

11 Q. Is that -- was that a one-time occurrence? Did anything  
12 like this happen any other time?

13 A. When I was a teenager about 14 or 15, there was times -- and  
14 he didn't assault me or anything at that time, but he would kind  
15 of lean in for a kiss and stuff like that. And I would just  
16 leave at the time. And I thought maybe I was just perceiving a  
17 fatherly-type-meant action incorrectly and that I was maybe just  
18 uncomfortable with it so I would leave. But in hindsight,  
19 looking back, there was -- there was nothing fatherly about him,  
20 ever.

21 Q. Based on what you've come to know about Mr. Propst and his  
22 character, do you have concerns about Mr. Propst?

23 A. Absolutely.

24 Q. And --

25 MR. PHILLIP: I'm going to object to this, Your Honor.

1 This is speculative and it's I think going beyond character and  
2 information.

3 THE COURT: Sustained.

4 BY MR. HUMBLE:

5 Q. Is there anything else that you would like to tell the Court  
6 with regard to Mr. Propst's character before you step down  
7 today?

8 A. Just that I know this is someone who shows no remorse for  
9 anything that they've ever done wrong and, honestly, I don't  
10 think thinks they ever have done anything wrong. And that's  
11 probably my biggest fear with someone who doesn't recognize the  
12 things that they are doing wrong, they're going to keep doing  
13 it. And I do think it's a safety issue for the children in  
14 society to have someone like that around.

15 MR. HUMBLE: I don't have any other questions. I  
16 think Mr. Phillip may have some for you.

17 THE COURT: Mr. Phillip?

18 CROSS-EXAMINATION

19 BY MR. PHILLIP:

20 Q. Your testimony was that Mr. Propst lived with you on and  
21 off.

22 A. Yes.

23 Q. Do you know what years that would have been?

24 A. 2008. After I had graduated I had moved out for about a  
25 year, before moving up to Green Bay to stay with them again.

1 And then 2012, after that incident, I went to a shelter in town.

2 Other than that, I was with him and my mom for most of it.

3 Q. You testified that you overheard Mr. Propst say something  
4 about sexual acts with children being okay.

5 A. Yes.

6 Q. When would that have been?

7 A. That was 2014, I believe.

8 Q. So you're not sure.

9 A. It was -- hold on. Yes, 2014, April. Because in March he  
10 had made other lewd phone calls and that's when mom had actually  
11 found out the context of his original conviction.

12 Q. So that comment would have been about five years ago then?

13 A. Yes.

14 Q. Now, you testified about Mr. Propst allegedly putting his  
15 hands on you. When would that have been?

16 A. 2012.

17 Q. And did you report that to law enforcement?

18 A. I did not.

19 Q. And you testified that at some point, I think the way you  
20 put it was he would lean in for a kiss, but you used the word  
21 then in hindsight that wasn't it. Am I characterizing your  
22 testimony accurately?

23 A. I had said that I thought it was a fatherly act, and in  
24 hindsight it wasn't it, in reference to it being a fatherly --

25 Q. Right. And hindsight's always 20/20, right?



1 A. Yes.

2 Q. And hindsight from today means that you already know all of  
3 this prosecution and the history and why we're here, right?

4 A. Yes.

5 Q. And that colors your ideas of what might have happened in  
6 the past.

7 A. In reference to the kiss thing?

8 Q. Yes.

9 A. Yes.

10 MR. PHILLIP: I don't have anything else, Your Honor.

11 THE COURT: All right. Anything else?

12 MR. HUMBLE: No, Your Honor.

13 THE COURT: Thank you, Ms. Nellis. You may step down.

14 THE WITNESS: Thank you.

15 (Witness excused at 1:53 p.m.)

16 MR. HUMBLE: May I just check with Mr. Nellis if he  
17 still wishes to --

18 THE COURT: Sure.

19 MR. HUMBLE: Government would call Morgan -- or excuse  
20 me, Mason Nellis.

21 THE CLERK: Do you solemnly swear the testimony you  
22 are about to give will be the truth, the whole truth and nothing  
23 but the truth so help you God?

24 THE WITNESS: I do.

25 THE CLERK: Please be seated. Please state your full

1 name for the record.

2 THE WITNESS: Mason Nellis. That's M-a-s-o-n,  
3 N-e-l-l-i-s.

4 THE COURT: Thank you, Mr. Nellis.

5 Go ahead, Mr. Humble.

6 MASON NELLIS, GOVERNMENT WITNESS, DULY SWORN

7 DIRECT EXAMINATION

8 BY MR. HUMBLE:

9 Q. Mr. Nellis, just so we understand, Michelle Nellis is your  
10 mother?

11 A. Yes, sir.

12 Q. And Morgan Nellis who just testified is your sister?

13 A. Yes, sir.

14 Q. And how old are you?

15 A. 29.

16 Q. And are you familiar with Mr. Propst?

17 A. I am.

18 Q. Did you live with him for any amount of time?

19 A. Yeah, for a few years.

20 Q. When approximately would that have been?

21 A. I would say from like '06 to '08.

22 Q. And have you been around him in addition to the times that  
23 you lived with him?

24 A. Yeah, plenty.

25 Q. Do you feel that you are familiar enough with Mr. Propst to

1 offer your view of his character to the Court?

2 A. Absolutely.

3 Q. How would you describe Mr. Propst's character?

4 A. I would just like look at it as a face value, the man's a  
5 terrorist. He terrorizes people. He gets off on that. And  
6 it's really only a matter of time before he acts out on these  
7 things if he hasn't already.

8 Q. And let me --

9 MR. PHILLIP: I'm going to object to that answer,  
10 Your Honor. Again, it's speculative both future wise and past.

11 THE COURT: Okay. I'll sustain the objection.

12 Mr. Nellis, and this is not to criticize you or to --  
13 just listen closely to Mr. Humble's question.

14 THE WITNESS: Okay.

15 THE COURT: And just answer that.

16 THE WITNESS: Do you want to repeat it?

17 THE COURT: No, he'll have another question for you.

18 Thanks.

19 THE WITNESS: Yeah.

20 MR. HUMBLE: "Sustained" means don't.

21 BY MR. HUMBLE:

22 Q. If I could just uncompact one portion of that.

23 A. Okay.

24 Q. You said the word "terrorist." That's a very loaded term.

25 A. Okay.

1 Q. Is there something based on what you -- your interactions  
2 with Mr. Propst or what you know of Mr. Propst, irrespective of  
3 these charges, that makes you say that?

4 A. Irrespective?

5 Q. Yeah. So put what you know about these phone calls to the  
6 side. Is there something about what you've observed or heard  
7 from Mr. Propst that makes you use that word terrorist?

8 A. Yeah, absolutely.

9 Q. And what is that?

10 A. He terrorizes anybody. Even a stranger in a grocery store,  
11 if they were in his way he would cuss them out.

12 Q. You've seen this?

13 A. Yeah, absolutely I have. Things of that nature, yes. Other  
14 drivers on the road, road rage like crazy. Calling my family  
15 all types of names and threatening them. Even our dog was  
16 scared of him, petrified. We had to get rid of it because it  
17 would just hide under the bed any time he was under the house  
18 because he was abusive.

19 Q. Were you afraid of Mr. Propst?

20 A. Not so much.

21 Q. And why is that?

22 A. I was afraid for my family because of him, but I just -- you  
23 know, he never threatened me personally and I'm just not scared  
24 of him like personally.

25 Q. Okay.

1 A. But I was worried about my family's well-being and anybody  
2 else's, yeah, absolutely.

3 Q. Have you observed actions or words of Mr. Propst's  
4 conversation, been involved in conversations with Mr. Propst and  
5 your mother that caused you concern about his character?

6 A. Can you repeat that, please?

7 Q. Sure. Have you observed anything or overheard conversations  
8 between Mr. Propst and your mother that caused you any concern?

9 A. Oh, absolutely.

10 Q. And what types of things were those?

11 A. One time -- one example I can think of is they were having  
12 some sort of argument, and he didn't think that I heard this but  
13 he said, "If you do this, I am going to fucking kill you" is  
14 what he said.

15 Q. Did you take him seriously?

16 A. Oh, yeah. You could hear it in his voice. Yeah,  
17 absolutely. He was serious, yes.

18 Q. With regard to -- did you ever observe -- let me rephrase  
19 that. Did you ever observe any conversations or actions between  
20 Mr. Propst and your sister that caused you concern?

21 A. Not really. I mean, yes, I have. I guess like he would  
22 call her names and he would constantly like tell her to like she  
23 needs to do this or -- and then -- like you need to get a job.  
24 And then he would be like, well, you need to quit that job and  
25 he'd kick her out -- try to kick her out of the house and things

1 like that. And just call her names, things of that nature,  
2 yeah. I never seen him do anything like physically  
3 inappropriate to her.

4 Q. So it sounds like with regard to character you'd describe  
5 him as controlling; is that fair to say?

6 A. Oh, yeah, absolutely.

7 Q. And before I end the questioning here, is there anything  
8 else with -- just with regard to Mr. Propst's character that you  
9 wish to convey to the Court, based on what you know about him?

10 A. No. No.

11 MR. HUMBLE: Okay. Thank you.

12 THE COURT: Okay. Thank you, Mr. Nellis.

13 MR. HUMBLE: Oh, just --

14 THE COURT: Wait a minute. Wait a minute.

15 Mr. Phillip has a couple questions.

16 MR. PHILLIP: Probably just two.

17 CROSS-EXAMINATION

18 BY MR. PHILLIP:

19 Q. So, the time that you lived actually with Mr. Propst in the  
20 same residence was approximately 2006 to 2008?

21 A. You know, it might have been '05 to '08-ish, approximately,  
22 yeah.

23 Q. Okay. So more than 10 years ago.

24 A. Sure.

25 Q. And some of the other questions were general. I'll finish

1 with a general question. You don't like him much, do you?

2 A. It's definitely not a personal thing, no.

3 MR. PHILLIP: Okay, thank you. That's all.

4 THE COURT: Thanks, Mr. Nellis. You can step down  
5 now.

6 (Witness excused at 1:59 p.m.)

7 MR. HUMBLE: Your Honor, I'm not going to present any  
8 more testimony or statements.

9 I would just, to sum up, say I think a 10-year  
10 sentence here serves a lot of purposes that I put in the  
11 sentencing memorandum. I think he is -- Mr. Propst has  
12 demonstrated over that 20-year span that the government talked  
13 about just an unwillingness to conform his behavior. And I  
14 think, frankly, the big sign is back in 2002 when he received  
15 that 41-month federal prison sentence following his state  
16 convictions, I would have thought or one would think that would  
17 have been the moment where this all stopped. But I think it's  
18 been shown that it has not. And it's essentially almost word  
19 for word the same exact behavior over a 20-year span which  
20 should cause this court concern.

21 Obviously you've heard a lot here about his character  
22 from the people who know him best, which I think would cause the  
23 Court some concern here. I don't very lightly say lock somebody  
24 up just for 10 years to protect the community, and frankly I'm  
25 not sure I have made that argument very often in this court.

1 But I do believe with regard to Mr. Propst there is a real  
2 purpose here of deterrence in the form of incarcerating him so  
3 this does not happen to another Ms. Besson or any number of the  
4 people in 15 states that this has occurred to over the 20 years,  
5 Your Honor.

6 THE COURT: Okay. Thank you, Mr. Humble.

7 Mr. Phillip?

8 MR. PHILLIP: Thank you.

9 I'll start at the beginning. Not the beginning of  
10 Mr. Propst's life or the beginning of the case, I'll start at  
11 the beginning of the hearing today. And I will start off by  
12 saying that aside from the written arguments in the sentencing  
13 memorandum, the government's presentation today focuses on  
14 information from the two witnesses that testified from between  
15 five and ten years ago.

16 And the government's presentation and its argument  
17 today, the government covers the case itself in the sentencing  
18 memorandum, so that's in front of the court as well, but the  
19 presentation today seems to be based on historical information,  
20 not charged, not referred for charges, not reported for charges  
21 at the time, and information given in hindsight.

22 I think -- well, I don't think -- I know that the  
23 Court obviously can take anything into consideration at  
24 sentencing under 3661 and decide which -- excuse me, how much  
25 weight to put on any information presented to it. And so my



1 argument regarding that historical information would be that the  
2 Court should put little or no weight on it.

3 The Court has already addressed the objections. I  
4 won't repeat those, but I'll simply repeat the argument that I  
5 think it's, as its character evidence, as the Court has ruled  
6 it's admissible, but I don't think that there's much weight to  
7 put on it. I don't know that it's necessarily accurate. It's  
8 old and, again, it's colored by hindsight. And while the Court  
9 can listen to it, I don't think that it's that relevant to the  
10 charges that are in front of the Court right now.

11 So, moving onto the sentencing arguments about the  
12 case itself. The nature and circumstances of this case are  
13 phone calls. And not all the calls are the same. Some of the  
14 calls were sexual in nature, some were harassing. Some calls  
15 weren't connected, some Mr. Propst would hang up. In other  
16 words, he would chicken out if someone answered. And some of  
17 the calls weren't believed.

18 One recipient of a call, this -- as a former report in  
19 discovery was the basis of actually at least one of the charges  
20 that were dismissed, the recipient of that call candidly said  
21 she didn't believe Mr. Propst about what he was saying. She  
22 still reported it and still gave a report to the FBI about it  
23 and talked about the contents of the call, but said she didn't  
24 believe what he was saying.

25 So not all these calls were the same. The majority of

1 the calls were to people in other states. The Court heard today  
2 from Ms. Besson who -- that call was not made to another state,  
3 that call was made within Green Bay. But the counts of  
4 conviction were calls from Wisconsin to Indiana and there were  
5 no actual children involved and no ability to carry out any of  
6 the things that Mr. Propst would say.

7 The calls coincide I think strongly with Mr. Propst's  
8 drug abuse, particularly with methamphetamine. And that is  
9 fairly easy to confirm both by common sense and by information  
10 in the presentence report. The day of the calls of conviction  
11 is June 12, 2018. Paragraph 83 of the report details  
12 Mr. Propst's arrest on that day where he was found with  
13 methamphetamine, was arrested, convicted of that possession of  
14 methamphetamine and served a term in the Brown County Jail.

15 The presentence report is long and detailed. This  
16 presentence report is even longer than many. Part of that is  
17 based on Mr. Propst's criminal history, part of that is based  
18 that he's 46 years old and has a longer life history than  
19 someone who is 20 years old. It goes through his own family  
20 history, details what I would call a broken home with some  
21 abuse. There's an early start for Mr. Propst to both using  
22 drugs and an early start to sexuality.

23 I think it's fair to say that the beginning of his  
24 life didn't start out smoothly. He began driving a truck as his  
25 career. He began that pretty early. He's done that for his

1 whole life. He's not married. As the Court has read and has  
2 heard he does have two children, they're ages 10 and 6. He  
3 wants to be a part of their lives. He's not sure, I'm not sure,  
4 perhaps nobody is sure how that might work out in the future.

5 His criminal history category is IV. He has relevant  
6 convictions for methamphetamine and for similar calls. So those  
7 convictions in 1999, those start in Florida. Those were at  
8 paragraph 65 through 77 of the presentence report. And though  
9 that takes up any number of pages and the dozen paragraphs,  
10 those convictions were resolved together essentially at the same  
11 time.

12 The calls in those convictions span mostly over a time  
13 period of a month. About nine charges from two days, and four  
14 or five others from a few other days. They were all resolved in  
15 July I think it was of 1999, with a four-month jail term and  
16 later an eight-month term on revocation.

17 Then, the other prior conviction that's relevant is  
18 2002, in the Middle District of Florida. That sentence was 41  
19 months in the Bureau of Prisons. And he successfully discharged  
20 from his term of supervised release. And paragraph 78 notes  
21 that he had positive adjustment on supervision with no  
22 violations.

23 After that, after 2002, there's a fairly long period  
24 without much else. There's a disorderly conduct in 2010, and a  
25 possession of marijuana in 2014. So that brings us up to the

1 convictions and the events bringing us here today.

2 So if we look at the Guideline Manual, the range comes  
3 up to be 24 to 30 months. And the Guideline Manual is supposed  
4 to at least take everything into consideration about a case:  
5 The specific defense characteristics, the defendant's criminal  
6 history, the number of counts, the number of calls.

7 And so, again, using the manual, there would be at  
8 least a presumptively reasonable sentence of 24 to 30 months.  
9 But no one's recommending the guideline range. Our request,  
10 frankly, is double the top end of the guideline range. Our  
11 request is 60 months.

12 And there's lots of reasons to recommend 60 months,  
13 five years, that recognizes Mr. Propst's priors, recognizes the  
14 repetitive nature of his priors, and then recognizes, maybe  
15 better than the guidelines do, that people received these calls.  
16 The guidelines can be dry, they can be mechanical I've argued in  
17 other contexts. And so the recommendation for a sentence of  
18 twice the range I think recognizes better that people got these  
19 calls and people were scared and frightened about that.

20 All of this is by telephone. So there's no actual  
21 contact. And it is scary, it is frightening, it's  
22 reprehensible, but none of the things that Mr. Propst said  
23 actually took place. Again, he was states away in charged  
24 counts and miles away in others.

25 The Court is often faced with situations where victims

1 or witnesses want the Court to sentence as if other events  
2 actually took place. Sometimes arguments are made that the  
3 Court should sentence for things that might happen in the  
4 future. The Guideline Manual, again, with the facts of the case  
5 and the defendant's record and adding levels for grouping,  
6 suggests 24 to 30 months. But, again, our recommendation is  
7 double that, of 60 months.

8 It would be foolish I think for me to recommend 24  
9 months. I don't think that would recognize the seriousness of  
10 the offense. But I also think it's possible to overstate the  
11 offense.

12 There are the concepts in sentencing of  
13 proportionality or marginal deterrence. And I think the  
14 government's recommendation of four times the guideline range  
15 and twice ours, the government's recommending 10 years, I think  
16 that recommendation overstates the offense and I think that it  
17 runs into the problem of marginal deterrence which is, in short,  
18 if the harshest sentence is given out for something that's not  
19 the worst offense, what do you do next time, not necessarily to  
20 this defendant, but to a different defendant.

21 I would argue that the 60-month sentence promotes  
22 respect for the law. It's a five-year sentence for these calls  
23 and five years is a long sentence. It's not a slap on the  
24 wrist, it's not a break, it's not a concession. It's a long  
25 sentence.

1           Some number of the people that spoke, and I respect  
2           their ability to speak and their opinions of what the Court  
3           should do, but the Court can't lock up Mr. Propst forever. The  
4           maximum possible sentence here is 12 years. No one's asking for  
5           that.

6           The sentence, as the Court is obviously aware, is to  
7           promote respect for the law, to address the seriousness of the  
8           offense. It's also supposed to deter both the defendant and  
9           other people. So in terms of specific deterrence, this is a  
10          longer sentence than any prior term for Mr. Propst. It is  
11          graduated punishment, it incrementally goes up, it gets more  
12          serious every time. So that deters Mr. Propst. And it can  
13          deter others to the extent that others hear about it. It shows  
14          that phone calls, even phone calls are dealt with harshly,  
15          particularly when they have the subjects and the effect that  
16          they do here.

17          I would argue that 60 months protects the public in  
18          really two ways. And I argue that it protects the public  
19          because it's connected to the provision of treatment.

20          So the first part of treatment that Mr. Propst needs  
21          would be the Bureau of Prisons Residential Drug Abuse Program.  
22          And furthermore, the Bureau of Prisons would also offer sex  
23          offender treatment for Mr. Propst. Both of those would start  
24          off as inpatient in the Bureau of Prisons, and then both would  
25          be continued on an outpatient basis through supervision.

1           So the presentence report notes that Mr. Propst spoke  
2 candidly in the interview about the offense and about his need  
3 for treatment. He mentions that Mr. Propst suggested what he  
4 called "empathy treatment." And that's not just a buzzword.  
5 Empathy treatment, what that means is trying to put yourself in  
6 somebody else's shoes. And I think Mr. Propst realizes that he  
7 needs that in order to stop making calls.

8           And I would gently disagree with at least one person  
9 that spoke saying people don't change. People do. People can  
10 change. People can become different than they were before.  
11 That may be hard to believe, it may be something that someone  
12 doesn't want to believe, but it is possible. We see people come  
13 through this courtroom through our own lives that do change over  
14 time. And so it is possible for Mr. Propst to become a better  
15 person.

16           There's a small step that he took. This is not  
17 something that the Court ordered, it's not something Mr. Koehler  
18 from probation suggested, it's not even something I suggested.  
19 He wrote apology letters on his own. He gave those to me and I  
20 can give them to the probation office so they can review them  
21 and see if they're acceptable to send out to the people  
22 involved. That's something that he did on his own and that's  
23 something that he feels is important. And that's something that  
24 I think is at least a start of some sort of empathy treatment on  
25 his own.

1           Then, although this may seem obvious too, but he  
2 obviously needs drug abuse treatment because the calls and the  
3 use of methamphetamine really goes hand in hand.

4           So between a five-year sentence within the Bureau of  
5 Prisons and three years on supervision, that's eight years for  
6 treatment and protection of the public. And that obviously  
7 could be longer if Mr. Propst relapses either in making calls or  
8 in using drugs, probation can -- or, excuse me, supervision can  
9 be extended.

10          As I mentioned in my sentencing memo, as a society we  
11 can't lock up everybody for everything forever. There is a  
12 consideration in both Congress when they write the statutes and  
13 set the penalties, and then the court when it makes sentencing  
14 decisions, there's a consideration about proportionality.

15          And then I think there's also some consideration to be  
16 given, I would characterize it as level of trust that the Bureau  
17 of Prisons and the probation office will both treat and monitor  
18 Mr. Propst. It's not as if when Mr. Propst finishes his term of  
19 imprisonment, whatever the Court sets, it's not as if he's  
20 released to the wild. The probation office has a great deal of  
21 resources, they have a good number of people, and they take  
22 their position in supervision very, very seriously. And the  
23 conditions of supervision that are proposed as part of the  
24 presentence report I think do address a lot of the  
25 considerations that not only the people who spoke have, but the



1 people in court, the parties have, and certainly the Court has  
2 in order to keep the community safe.

3 In many, if not most cases, the driving factor in  
4 determining a sentence is punishment, what punishment is  
5 sufficient but not greater than necessary. I would argue that  
6 60 months is punishment, that it is a long sentence for these  
7 particular crimes, the ones he stands convicted of. It is a  
8 long sentence for this defendant. It's longer than his prior  
9 sentences. And with supervision, the term of incarceration and  
10 the term of supervision does what we want a sentence to do.

11 So I would ask that the Court impose a sentence of  
12 5 years, that is, 60 months, the 3 years of supervision.

13 I would ask that the Court decline to impose a fine  
14 because Mr. Propst does not have the ability to pay.

15 I'd ask that the judgment include recommendations for  
16 the Residential Drug Abuse Program, for sex offender treatment,  
17 for placement at Oxford or closest to Green Bay as possible.

18 Your Honor, I believe that Mr. Propst has prepared a  
19 short statement. If the Court is ready for that, he's prepared  
20 to read that.

21 THE COURT: Yes. Thank you, Mr. Phillip.

22 Mr. Propst, is there anything you would like to say  
23 before I make a decision?

24 THE DEFENDANT: Yes, Your Honor. Thank you.

25 ALLOCUTION

1 BY THE DEFENDANT:

2 My name is Michael Propst. I am the person who made  
3 these terrible phone calls to people claiming I had found a  
4 child that was lost when, in fact, I had not; and, in some of  
5 those calls, claimed that I was sexually abusing them. I accept  
6 responsibility for making these phone calls and I humbly offer  
7 my sincerest apologies to the Court and to each and every one of  
8 the victims of my crime, especially Ms. Besson, for having to  
9 endure them.

10 I have also written individual letters of apology to  
11 each victim I found in the discovery and have given these to my  
12 attorney.

13 Though I know my words of apology now can never fully  
14 take back the terrible words I said to people that I called, I  
15 do truly regret every call of this nature I ever made more than  
16 anything in my life. I pray that some day all these people will  
17 be able to forgive me for acting out on my sickness while I'm  
18 not in my right mind, for I would never actually harm a child in  
19 that way, or any way, and I never have.

20 I myself am a father of two young children whom I love  
21 more than life itself. And in hindsight, I can imagine the  
22 fear, anger, even hatred I would feel if someone called me up  
23 saying such things to me. But in my emotionally-numbed  
24 meth-induced frenzies, I would reason that because the whole  
25 scenario was made-up and not real, that I wasn't really harming

1 anyone. Failing to see in those moments that frightening these  
2 people with these sick lies was harming them. Maybe not  
3 physically, but certainly mentally and emotionally.

4 If I could take them all back, I would, in a  
5 heartbeat. I don't ever want to do this again to anyone. I  
6 want help and I want treatment.

7 Therefore, while in prison I will volunteer for sex  
8 offender treatment if they give it to me, and drug abuse  
9 treatment. And upon my release from prison I will continue sex  
10 offender and drug abuse treatment while on supervised release  
11 and abstain from my drug use and, therefore, any further deviant  
12 behavior.

13 I will also reacquire employment as a commercial truck  
14 driver and pay off all child support arrears. And, if I am  
15 permitted, I would very much like to reassume my place as dad in  
16 my sons' lives with the time I have left in this world.

17 And with that final thought, I beg the mercy of the  
18 Court. Thank you, Your Honor.

19 THE COURT: Okay. Thank you, Mr. Propst.

20 Mr. Humble, how many calls of the nature in the Besson  
21 case are part of the relevant conduct as opposed to the past  
22 record in this case? That's what I'm looking at.

23 MR. HUMBLE: I'm sorry, Your Honor. Could you say  
24 that again?

25 THE COURT: How many calls are relevant conduct to

1 this -- the charges in this case as opposed to past? I think  
2 you mentioned 41 calls in your memorandum, is that --

3 MR. HUMBLE: 41 convictions for calls.

4 THE COURT: 41 convictions for calls over the period  
5 of his record. But in this particular case, this would be,  
6 Mr. Koehler, paragraphs really 21 through --

7 MR. PHILLIP: One answer to your question, Your Honor,  
8 is in -- I'm looking for it -- the number 105 sticks in my head.  
9 If I can just find that paragraph.

10 PROBATION OFFICER: 20.

11 THE COURT: Which paragraph?

12 MR. PHILLIP: Paragraph 20.

13 PROBATION OFFICER: 20.

14 THE COURT: 20.

15 MR. PHILLIP: And that's -- those are calls made on  
16 June 12th, and so that's the -- what I'm going to call the date  
17 of offense.

18 THE COURT: Uh-huh.

19 MR. PHILLIP: Those are the dates of the charges and  
20 the convicted charges.

21 And a more general answer to the Court's question is,  
22 I'll candidly say, I don't know because the discovery had a  
23 large amount of phone records, a lot of which were duplicates,  
24 and it's just a list of phone calls. And so you're not  
25 necessarily sure what those calls are. I wouldn't be prepared

1 to agree and perhaps the government wouldn't be prepared to  
2 argue that all of them were --

3 THE COURT: Yeah.

4 MR. PHILLIP: -- calls of this nature so....

5 THE COURT: But paragraphs, really 21 -- I mean, the  
6 Besson is the -- call is what precipitates things. But as I  
7 read this, the reports that document the nature of the calls and  
8 provide the description of what was said is paragraphs 21  
9 through --

10 Mr. Koehler, are these all up to paragraph 31?

11 PROBATION OFFICER: Yes, Your Honor. The conduct from  
12 June 12 is kind of encapsulated between paragraphs 21 and 26.  
13 And then it was through a further investigation they discovered  
14 the conduct in Delaware, which is kind of outlined between  
15 paragraphs 27 and 32.

16 THE COURT: And that's all relevant conduct, correct,  
17 because this is -- he's not being prosecuted in Delaware.

18 PROBATION OFFICER: Yes.

19 THE COURT: So the events of the June 12th, 105 calls,  
20 but we have how many actually -- I mean, those are the calls  
21 that are described to -- in addition to the -- is that -- I  
22 mean, the Bessons, then Mercy Child Care in Iowa, Bright  
23 Beginners Academy Child Care and Preschool in Indiana, Community  
24 United Child Care in Iowa, Building Blocks Day Care Center in  
25 Indiana.

1           Then additional calls on that day, obscene or  
2   harassing nature to a hair salon in Orlando, grocery store in  
3   Leesburg, college librarian in Duluth, daycare center in  
4   Portland, Oregon. We don't have reports concerning what was  
5   said there. At least that's not part of the presentence report.  
6   Were those similar? Were those claiming to have -- be sexually  
7   assaulting children?

8           PROBATION OFFICER: That I do not know, Your Honor.

9           THE COURT: We don't know.

10          PROBATION OFFICER: Correct.

11          THE COURT: That's not part of the discovery. But  
12   then --

13          MR. PHILLIP: There is some discovery, Your Honor,  
14   about some of the other calls that were made to other  
15   jurisdictions and that was part of my argument to the extent  
16   that some of the calls were sexual, some were harassing, some  
17   were a call, a hang-up, a callback, a hang-up.

18          THE COURT: But these that I've described to the  
19   daycare centers were calls where he's describing active sexual  
20   abuse of children and acting it out on the phone.

21          MR. HUMBLE: Correct. However, I will point out what  
22   Mr. Phillip did, that at least on one occasion the individual  
23   did not believe that that was actually occurring.

24          THE COURT: Right. Then there's -- to go on, then  
25   there's the daycare center in San Pedro, California.

1           And then we get, beginning at 28, the calls made from  
2     Delaware. And on November 13th, 2017 -- and there you have the  
3     Tender Loving Kare childcare facility in Middleton, Delaware.

4           Then Bethel Christian School and Preschool in Lewes,  
5     Delaware. These were not claims of sexual abuse, though, these  
6     were "I picked up lost children;" is that right?

7           MR. HUMBLE: That's correct.

8           THE COURT: Kids Cottage Daycare in --

9           The restaurant in Burlington where he claims he was  
10    sexually abusing a child. In Tennessee it looks like. Okay.  
11    All right.

12          Well, in arriving at a sentence I am to consider, of  
13    course, the guidelines here which, as the parties agree,  
14    understate the seriousness of the offense or the -- and the  
15    history and character so as to understate a recommended  
16    sentence. The parties agree that, at least pursuant to the plea  
17    agreement, that the guideline range of 24 to 30 months is  
18    inadequate.

19          With respect to the other aspect, though, I must  
20    consider the guidelines, but then I must consider the nature and  
21    circumstances of the offense, the history and character of the  
22    defendant, and then fashion a sentence which meets those goals  
23    of, first of all, imposing just punishment for the offense, but,  
24    secondly, deterring -- providing deterrence to the defendant and  
25    others, also protecting the public from further crimes of the

1 defendant, and then providing opportunities for rehabilitation.

2 Looking first at the nature and circumstances of the  
3 offense, I think these offenses are very serious. I don't think  
4 the guidelines certainly capture the calls to a mother, to a  
5 family, to a childcare center where someone is -- enacts the  
6 sexual abuse, ongoing sexual abuse of a child and tries to  
7 convince them that they're -- that a child's being abused in  
8 this fashion.

9 I think Ms. Besson described the impact upon her,  
10 which is very understandable. This is just not a nuisance call,  
11 an obscene call. The person that didn't believe it, to him it  
12 probably was that, but that's because the person didn't believe  
13 some -- it could happen. But others who bought into it, and it  
14 sounds like Mr. Propst was very good at acting this out, he  
15 convinced a lot of people, they were terrified.

16 So these aren't nuisance calls, these aren't harassing  
17 calls, these are -- I think Mr. Nellis isn't far off when he  
18 describes them as terrorism. Not mass terrorism, but he's  
19 terrifying -- he's terrifying someone. And that's his intent,  
20 in such a horrible way.

21 So I think when I look at the history here and having  
22 done this and received prison sentences for it and jail  
23 sentences for it and then continuing to do that, I think we're  
24 looking at a very serious offense. It's not just one either.  
25 This is not one thing he did to one person, this is something



1 and often multiple calls he made to these different childcare  
2 centers over a period of time, many on one day, others on  
3 another day. So I think the offenses are very serious.

4 Now, the history and character of the defendant. And  
5 here, of course, we have multiple times when the defendant did  
6 the same thing. His criminal history record is I believe we  
7 said a IV. Frankly, it's kind of happenstance because I think,  
8 you know, he could have been charged multiple times, had  
9 multiple sentences for these that are separate and distinct  
10 crimes and his criminal history category would be higher. But  
11 still, even a VI with a 13 doesn't bring us up to the -- even  
12 the five-year sentence that's being recommended at the low end  
13 here.

14 The character of the defendant. You know, we heard  
15 character evidence, but really the nature and number of these  
16 offenses provide strong evidence of a very poor character, a  
17 very dangerous character.

18 The argument that he is likely to harm children in the  
19 future. I am not good at predicting the future. I agree that  
20 people change. Often though the best evidence of what they will  
21 do in the future is what they have done in the past, especially  
22 if it's of a long duration. And here we have misconduct going  
23 over a number of years. The explanation that it's just drugs  
24 that make me do it or it coincides with my drug use, it does  
25 coincide with the drug use, but I don't believe it's drugs that

1 make Mr. Propst engage in this behavior. It seems to me he  
2 engages in the behavior and uses drugs while doing it perhaps to  
3 make it easier for him to do it. I don't explain this -- or I  
4 don't have any illusion I think that merely providing him drug  
5 treatment would be enough to counter this.

6 His allocution and his remorse today is not all that  
7 credible given the history here. Had he not been doing these  
8 things or had a history of doing these things, it perhaps would  
9 be more credible, but it's far less credible today.

10 So I think that I've certainly considered the  
11 testimony of Ms. Nellis, Morgan Nellis and Mark Nellis, but it  
12 is dated and I find Ms. Morgan Nellis credible. I think it's  
13 clear that these are painful things. Mr. Philip talked about  
14 hindsight coloring her view, but I think hindsight often  
15 enlightens us to events that occurred before rather than  
16 coloring them so much.

17 And so I'm satisfied that there was a history there.  
18 That doesn't tell me, though, about the type of behavior we're  
19 looking at here. And I'm -- I don't find evidence that he's had  
20 contact with children.

21 The expression, though, described in the presentence  
22 report at paragraph 117, I believe recounted by both Ms. Nellis  
23 and her daughter that the defendant saying that sexual  
24 infatuation for minor children, stating it's natural for men to  
25 be attracted to four- or five-year-old children, believes

1 society should be more accepting of this, that's unfortunately  
2 an attitude and a philosophy that's not solely Mr. Propst's.  
3 And I think that expresses -- and I credit that description, I  
4 think that expresses an attitude that is reflected in these  
5 offenses.

6 So I think that the character is poor. I think this,  
7 looking at the offenses themselves rather than alleged offenses,  
8 tells me enough about the seriousness of this offense and the  
9 character of the defendant to conclude that a substantial prison  
10 sentence is appropriate.

11 And it is -- it is difficult to predict the future.  
12 And I don't think a sentence is supposed to predict the future.  
13 It is -- certainly considers the danger of the defendant to  
14 others, but it has to be proportional to the offense that the  
15 defendant committed. I've said in another context that it's --  
16 defendant should be sentenced for what he did, not for what a  
17 judge fears he might do at some later time in some other place.  
18 We don't have the kind of knowledge.

19 And I think it's -- while I certainly -- while the  
20 history here and the character indicate the need for a  
21 significant sentence and something on the higher end of the  
22 range that would be proportional and just, I'm satisfied that  
23 that prediction can't be the basis of the Court's sentence or  
24 the sense that he's perhaps as likely to engage in such behavior  
25 again.

1           And despite my finding of less than credible  
2 statements of remorse given his circumstances and opportunistic  
3 manner in which these arise while facing sentencing, I don't  
4 want to suggest that Mr. Propst is incapable of changing nor  
5 that he wants to change. He certainly has that ability. He's a  
6 human being. Every human being has the freedom to commit other  
7 crimes or not, to use drugs or not. And that's up to Mr. Propst  
8 ultimately once he serves his sentence.

9           Considering all these things together, though, I'm  
10 satisfied that a sentence within the range argued by counsel is  
11 appropriate and I'm going to impose a sentence that will total  
12 84 months. I'm going to impose 36 months on Counts 1 and 3 to  
13 be served consecutive, and an additional 12 months on Count 4  
14 which will be consecutive. So that's a total of 7 years or 84  
15 months. I'm also going to impose 3 years of supervised release  
16 which I understand to be the maximum.

17           During that period of supervised release, Mr. Phillip  
18 is right, Mr. Propst will be supervised. Should he violate  
19 conditions of supervision, the public will be protected in the  
20 sense that we will find out quickly and he will be brought back  
21 to this court where he can be returned to prison and supervision  
22 extended afterwards.

23           In arriving at this sentence, I've looked at not just  
24 the single offense or the impact it would have on one person,  
25 but I've considered the impact it's had on all of the people

1 that are within this relevant conduct. And I think were one or  
2 two of these before me I think we'd be looking at a significant  
3 sentence, but to have this many after a history as indicated  
4 here, I think the sentence should reflect the terror that the  
5 defendant inflicted knowingly on families and those that  
6 received these phone calls, the daycare centers.

7 So that's my rationale. And I believe that it  
8 warrants these types of sentences for what would otherwise and  
9 would more commonly when they come to a federal court are  
10 nowhere near as serious as these, but the manner in which the  
11 defendant committed these crimes I think warrant a sentence  
12 significantly over what the guidelines would otherwise  
13 recommend.

14 Mr. Phillip, if I recall correctly there is not an  
15 objection to the conditions set forth or the recommended  
16 conditions of supervision? Do you wish me to -- does your  
17 client wish me to go through them one by one as part of the  
18 pronouncement of sentencing here?

19 MR. PHILLIP: Just one moment. I'll ask Mr. Propst.

20 THE COURT: I also want -- the judgment will reflect  
21 the Court's recommendation for alcohol and drug abuse treatment  
22 as well as sex offender treatment. I note that the defendant  
23 was offered treatment when he was last in federal prison at the  
24 federal correctional center at Butner and did not take advantage  
25 of it or --

1 MR. PHILLIP: As to the conditions, Your Honor, I'm  
2 just looking for the number.

3 Condition No. 2. Must not leave the state or the  
4 district without the permission of the court or probation  
5 office.

6 It may be that if Mr. Propst gains employment again as  
7 a truck driver that that condition is either going to be -- I  
8 don't want to call it problematic, but it may take some  
9 management by the probation office. And so I don't know that  
10 that's necessarily an objection, but it's the premonition about  
11 he may have to ask to leave the state if he's employed as a  
12 truck driver.

13 I discussed briefly with Mr. Propst -- well, let me  
14 step back. We discussed the conditions of supervision when we  
15 received the presentence report, and then I asked him just now  
16 and he said that he does not object to the Court adopting the  
17 conditions and the rationale that the Court does not have to  
18 read each one out loud. But, again, I'm making that comment  
19 about the condition of staying within the district.

20 THE COURT: And we certainly see that in other cases.  
21 At least at this stage and upon release, I think 2 makes sense.  
22 It's necessary to be able to supervise to know where a person  
23 is, and if he leaves the state we don't.

24 In the event that a job as a truck driver becomes  
25 available, we can certainly modify the conditions. I can invest

1 -- or the agent does have the authority to approve and certainly  
2 for employment-related purposes, for legitimate employment that  
3 would make sense. But just the possibility of getting a  
4 truck-driving job at this point doesn't warrant not having that  
5 in there. It can be modified later if circumstances warrant.

6 There's no objection and no -- no objection to my not  
7 pronouncing them, each condition as a part of the sentence then,  
8 I will adopt the conditions as my -- as stated in the  
9 presentence report and the rationale stated therein. The types  
10 of conditions we impose on cases like this include: Close  
11 monitoring and drug and alcohol testing and treatment, random  
12 testing so that if he's back on drugs we'll know, as well as sex  
13 offender treatment. And that will be followed up on.

14 I did want to point out paragraph 115 describes the  
15 opportunity he was placed in sex offender treatment while housed  
16 at FCI Butner back in his earlier federal sentence, did not  
17 complete that program, had multiple arguments with participants  
18 which resulted in him being removed from the class.

19 And so I'm satisfied that treatment is appropriate,  
20 but so far it has not, I don't think, met with the type of  
21 attitude one would expect and hopefully now it will be.

22 MR. PHILLIP: Your Honor, Mr. Propst pointed out one  
23 further thing that I forgot. I thank him for doing that.

24 Condition No. 12. I'd ask that it be simply modified  
25 to refrain from the use of excessive -- or refrain from the

1 excessive use of alcoholic beverages.

2 THE COURT: Okay. That modification will also be  
3 adopted, excessive use. And by "excessive use" I think a  
4 condition should indicate drinking to intoxication with a blood  
5 alcohol content in excess of .1.

6 MR. PHILLIP: Thank you.

7 THE COURT: That should provide the specification.

8 I also say if the drug abuse counselor recommends that  
9 there be complete absence or a complete removal of alcohol, I  
10 would adopt that as well. But I don't have a basis for saying  
11 that at this point on this record.

12 Anything else other than appeal rights?

13 MR. HUMBLE: Not from the government.

14 THE COURT: Was there a request for Oxford or --

15 MR. PHILLIP: Yes.

16 THE COURT: -- a facility as close to -- the judgment  
17 will include a recommendation for a placement as close to his  
18 home as possible, with the understanding that the need to  
19 provide treatment recommended outweighs that.

20 All right, Mr. Propst. You have the right to appeal  
21 your conviction or your sentence. Your attorney will talk to  
22 you about possible grounds to appeal. If you cannot afford the  
23 costs of an appeal, the clerk will assist you so you can file in  
24 forma pauperis and not have to pay those costs. If you choose  
25 to appeal, you have to file a notice of appeal within 14 days of



1 the entry of the judgment. If you fail to file a timely notice  
2 of appeal, you would lose your right to appeal. Do you  
3 understand those things?

4 THE DEFENDANT: Yes.

5 THE COURT: Anything else?

6 MR. HUMBLE: Other charges dismissed, Your Honor.

7 THE COURT: Other charges are dismissed.

8 MR. HUMBLE: I don't know if you mentioned special  
9 assessment or not. I'm sorry.

10 THE COURT: The special assessment has to be imposed  
11 as well, and that's a hundred dollars for each count for a total  
12 of \$300. Thank you, Mr. Humble.

13 Okay. This matter is concluded.

14 MR. HUMBLE: Thank you.

15 (Hearing concluded at 2:45 p.m.)

16 \* \* \*

C E R T I F I C A T E

I, JOHN T. SCHINDHELM, RMR, CRR, Official Court Reporter and Transcriptionist for the United States District Court for the Eastern District of Wisconsin, do hereby certify that the foregoing pages are a true and accurate transcription of the audio file provided in the aforementioned matter to the best of my skill and ability.

Signed and Certified August 9, 2019.

/s/John T. Schindhelm

John T. Schindhelm

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